

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES E. WILSON)	
Claimant)	
VS.)	
)	Docket No. 251,991
PTMW, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL NATIONAL AMERICAN GROUP)	
)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Bryce D. Benedict's October 16, 2000, Award. The Appeals Board heard oral argument on April 4, 2001 in Topeka, Kansas.

APPEARANCES

Claimant appeared by his attorney, Cynthia Patton, appearing for Frederick J. Patton, II of Topeka, Kansas. Respondent and its insurance carrier, appeared by their attorney Michael R. Kauphusman, appearing for D'Ambra Howard of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

Issues

The Administrative Law Judge (ALJ) awarded claimant a 2 percent permanent partial disability for a scheduled left leg injury.¹ The ALJ based the 2 percent award on claimant's treating physician Dr. Kenneth E. Teter's opinion that claimant's November

¹ See K.S.A. 1998 Supp. 44-510d(a)(16).

24, 1998, work-related accident resulted in claimant sustaining a 2 percent permanent functional impairment of the left lower extremity.

On appeal, claimant contends the more credible functional impairment rating opinion contained in the record is Dr. Daniel D. Zimmerman's 20 percent of the left lower extremity. Accordingly, claimant requests the Appeals Board (Board) to increase the 2 percent permanent partial disability of claimant's left leg to 20 percent in accordance with Dr. Zimmerman's opinion.

In contrast, respondent requests the Board to affirm the Award. Respondent contends Dr. Teter's 2 percent opinion is the most credible and accurate disability opinion based on the statutorily required AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.²

The only issue for Board review is the nature and extent of claimant's disability.

Findings of Fact and Conclusions of Law

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

On November 24, 1998, claimant fell while working for the respondent and injured his left knee. Respondent provided medical treatment for claimant's injured left knee through orthopedic surgeon Kenneth E. Teter, M.D.

Dr. Teter first saw claimant, the day after the accident, November 25, 1998. Dr. Teter's eventual diagnostic impression was medial meniscal tear of the left knee. After claimant's left knee did not respond to conservative treatment, Dr. Teter, on March 1, 1998, performed an arthroscopy partial medial meniscectomy and chondroplasty of the medial femoral condyle of the left knee. Post surgery claimant was placed in a physical therapy program, a knee brace, and prescribed anti-inflammatory and pain medications. On March 31, 1999, Dr. Teter released claimant to return to work with no permanent restrictions except claimant was to continue to wear the knee brace while working.

On December 15, 1999, claimant again fell at work and aggravated his left knee condition. Because Dr. Teter was not available, another orthopedic surgeon, Kendall Gimple, M.D., an associate of Dr. Teter's, treated claimant on December 16, 1999. Because claimant's knee brace protected his left knee, claimant only suffered a contusion of the left knee in that fall.

² See K.S.A. 1998 Supp. 44-510d(a)(23).

The last time Dr. Teter saw claimant was August 21, 2000. At that time, claimant continued to work for the respondent and complained of pain and discomfort in his left knee. He also continued to take medication for the pain and discomfort. Dr. Teter advised claimant to continue to wear the knee brace at work and restricted claimant from repetitive climbing. In accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Teter opined that claimant had sustained a 2 percent permanent functional impairment of the left lower extremity. Dr. Teter utilized Table 64, found at page 85 of the Fourth Edition, to arrive at his 2 percent rating based on claimant's post-surgery diagnosis.

At claimant's attorney's request, he was examined and evaluated by Daniel D. Zimmerman, M.D., a certified independent medical examiner located in Westwood, Kansas. A large portion of Dr. Zimmerman's practice is devoted to medical/legal evaluations of persons with personal and workers compensation injuries. Dr. Zimmerman saw claimant on one occasion, June 9, 2000. After reviewing claimant's medical treatment records, taking a history from claimant and performing a physical examination, Dr. Zimmerman found claimant had pain and discomfort as well as range of motion restrictions, affecting the left knee. Based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, and the range of motion model contained in the Fourth Edition, Dr. Zimmerman opined that claimant had a 20 percent permanent functional impairment of the left lower extremity. He imposed restrictions on claimant of no lifting over 20 pounds occasionally, 10 pounds frequently, and to avoid activities requiring the flexion of the left knee over extended periods of time.

At the regular hearing held on September 7, 2000, claimant testified that he continued to have pain and discomfort in his left knee and he continued to take pain and anti-inflammatory medication. Additionally, if claimant does not wear the prescribed knee brace, his left knee has the tendency to collapse underneath him.

The dispute in this case centers around the statutorily required use of the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, to determine the loss of a scheduled member based upon permanent functional impairment.

The respondent argues and the ALJ agreed that Dr. Teter's determination that claimant's left knee injury resulted in a 2 percent functional impairment of the left lower extremity using the injury or diagnostic related estimate model contained in the Fourth Edition best represents claimant's loss of use of his left leg as a result of his left knee injury. In contrast, claimant argues that Dr. Zimmerman's 20 percent permanent functional impairment of claimant's left lower extremity using the range of motion model as contained in the Fourth Edition best represents claimant's loss of use of his left leg as a result of his left knee injury.

Both of the physicians who testified in this case and who expressed opinions on claimant's permanent partial functional impairment as a result of his left knee injury utilized the AMA Guides, Fourth Edition, as required by statute. But the two physicians disagreed on the interpretation and the method that should be utilized in determining the permanent functional impairment resulting from claimant's left knee injury. The Board finds, the record as a whole, which includes claimant's testimony and the testimony of both Dr. Teter and Dr. Zimmerman, prove that claimant's permanent partial disability of his left leg resulting from his work related left knee injury lies somewhere between Dr. Teter's 2 percent opinion and Dr. Zimmerman's 20 percent opinion. The Board, as the fact finder, is free to consider all of the evidence and decide for itself the appropriate percentage of permanent partial disability. The numbers testified to by the physicians are not absolutely controlling.³ The Board finds that equal weight should be given to both Dr. Teter's 2 percent and Dr. Zimmerman's 20 percent rating to arrive at claimant's appropriate permanent partial disability of the left leg. Thus, the Board concludes claimant sustained an 11 percent permanent partial disability of the left leg as a result of the November 24, 1998, work-related accident.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that ALJ Bryce D. Benedict's October 16, 2000, Award should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, James E. Wilson, and against respondent, PTMW, Inc. and its insurance carriers, Continental National American Group, for an accidental injury sustained on November 24, 1998, and based on an average weekly wage of \$399.04.

Claimant is entitled to 6 weeks of temporary total disability compensation at the rate of \$266.04 per week⁴ or \$1,596.24, followed by 21.34 weeks of permanent partial disability at the compensation rate of \$266.04 per week or \$5,677.29, for an 11 percent permanent partial disability of the left leg, making a total award of \$7,273.53.

As of July 28, 2001, the total Award of \$7,273.53 is all due and owing and is ordered paid in one lump sum, less any amounts previously paid.

³ See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, Syl. ¶1., 817 P. 2d 212, *rev. denied* 249 Kan. 778 (1991).

⁴ The ALJ's Award found that 66 2/3 percent of the \$399.04 average weekly wage equaled \$262.16 per week but the Board finds that 66 2/3 percent of \$399.04 is \$266.04 per week.

Respondent is ordered to pay all reasonable and related medical expenses which include the medical expenses admitted into evidence at the regular hearing.

Future medical is awarded upon proper application to and approval by the Director.

An unauthorized medical allowance of up to \$500 is awarded upon presentation to respondent of an itemized statement verifying the expenses.

All remaining orders contained in the Award are adopted by the Board.

IT IS SO ORDERED.

Dated this ____ day of July, 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frederick J. Patton, II, Topeka, Kansas
D' Ambra Howard, Overland Park, Kansas
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director